



Security Studies Can Provide Tax Benefits and Protect Valued Executives

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Now that payroll season is heating up, employers must carefully tally up all the taxable fringe benefits they provide to employees. The Internal Revenue Code makes clear that, unless there is a specific authorized exemption from taxation, employers must treat any in-kind or cash benefit as taxable to the employee, include the benefits on Form W-2, and withhold employment taxes. It is common for employers to take advantage of tax exclusions for health insurance, life insurance, and business travel, meals, and entertainment. However, many employers do not realize that an “overall security program” that provides for bodyguard chauffeurs, private air travel, and/or security features on company-provided automobiles may also be excluded under the very favorable provisions of section 132 of the Internal Revenue Code.

IRS guidance provides that if an employer establishes an “overall security program,” specified employees may receive certain otherwise personal benefits on a tax-free basis. These benefits include a bodyguard chauffeur for unlimited business and personal travel, security features on a company-provided automobile, and the excess cost of travel on employer-provided aircraft. Importantly, these benefits also can be provided to the executive’s spouse and dependents. An overall security program is deemed to exist in one of two ways: A 24/7 security program (which few executives would want), or an “Independent Security Study.” An Independent Security Study exists if:

- (A) A security study is performed with respect to the employer and the employee (or a similarly situated employee of the employer) by an independent security consultant;
- (B) The security study is based on an objective assessment of all facts and circumstances;
- (C) The recommendation of the security study is that an overall 24/7 security program is not necessary and the recommendation is reasonable under the circumstances; and
- (D) The employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The independent security study must find security threats which may, but are not required to, include:

- (A) A threat of death or kidnapping of, or serious bodily harm to, the employee or a similarly situated employee because of either employee’s status as an employee of the employer; or

(B) A recent history of violent terrorist activity (such as bombings) in the geographic area in which the transportation is provided, unless that activity is focused on a group of individuals which does not include the employee (or a similarly situated employee of an employer), or occurs to a significant degree only in a location within the geographic area where the employee does not travel.

There are several added benefits to obtaining an Independent Security Study. Substantively, the security firm conducting the study provides valuable insight and techniques to keep the work environment and the personal life of the employee safer, and the cost of the study is not taxable income to the employee. More recently, the Tax Cuts and Jobs Act now disallows deductions for any payments provided to employees by an employer for commuting expenses but provides an exception where there are security concerns, which would very reasonably be the case where an Independent Security Study is in place.

Winston Take-Away: Employers should explore obtaining an Independent Security Study, where either work-related or other types of security threats exist, in order to obtain significant tax and safety benefits for both employees and employer.

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